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TOWARDS LEGAL MARIJUANA

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P R O C E E D I N G S

MR. WALSH: Well, good morning, everybody. My name is John Walsh. I'm with the Washington Office on Latin America, also known as WOLA, and it's my pleasure on behalf of WOLA and Brookings Governance Studies to welcome you to this morning's event on the International Impacts of the U.S. Trend toward Marijuana Legalization. This is the sixth event in the WOLA/Brookings' series on legal marijuana. We began in October 2012 with an eye to what might happen if, in fact, the states of Colorado and Washington voted to approve legal marijuana that year.

In fact, that did happen. We've had a series of events since then about federalism issues, about public opinion and have published a series of papers including two recent papers on the roll out of legal marijuana in the states of Colorado and Washington. Today's topic is going to be what are the international impacts of this shift within the United States, especially given the fact that the United States was the chief architect and has, for decades, been the prime defender of the UN drug control system and its suite of treaties.

To help us answer that question today, we're privileged to have with us Wells Bennett of Governance Studies and the managing editor of *Lawfare*, Martin Jelsma, the director of the Drugs and Democracy Program at the Transnational Institute in the Netherlands, Lisa Sanchez of Mexico Unido Contra la Delincuencia and Transform Drug Policy Foundation based in Mexico City, and Sandeep Chawla, recently retired after 20 years with the United Nations' Office on Drugs and Crime where he was simultaneously deputy director and director of research and policy.

Just a few words about our format and some acknowledgements. We'll go panelist by panelist. Each will make brief opening remarks. We'll have a conversation among ourselves. And then, we'll open it for questions from the audience.

A couple of acknowledgements: I want to recognize my colleague at Brookings Governance Study, John Rauch, who has been a close partner throughout this series of events.

If you could raise your hand. I also want to acknowledge the generous support from the Good Ventures Foundation, whose support has made this event and several of our papers possible.

Now, a hint at what the international impacts of the U.S. shift on marijuana legalization came very recently from statements by the U.S. Assistant Secretary of State William Brownfield in New York at the UN, where he said, in part, "How could I, a representative of the government of the United States of America, be intolerant of a government that permits any experimentation with the legalization of marijuana, if 2 of the 50 states of the United States of America have chosen to walk down that road?" So, I think that's the hint of an answer of the profound impact that the changes in the United States are already having on the debate.

So, a couple other housekeeping issues. You are welcome to join this conversation on Twitter, the hash tag BIMJ (sic). And without further ado, Wells?

MR. BENNETT: Thank you, John. Let me begin by expressing my gratitude to be a part of this panel. I'm really glad to see all of you and to be taking part in this discussion. Briefly, I just want to do essentially, two things. One, set out some of the international legal context as it applies to the United States' evolving experiment with marijuana, including the United States' arguments as to why, in its view, it is in compliance with the international drug control regime.

And two, just for -- ever briefly, I'm sure we'll get into this in the discussion and Q&A, talk about the upsides and downsides of the U.S.' approach -- the legal setting. It is almost certainly not news to people in this room that the international

drug control regime comprises three accords to which the United States is a party; one done in 1961 and amended in 1972; another in 1971, and still another in 1988 concerning illicit trafficking.

Now, in the interest of time and in keeping everyone awake, I won't recite legal provisions to you, but suffice it to say that together, these instruments deal rather sternly with drugs within their purview, and that includes marijuana. To name a few pretty well known examples, the general provisions of the 1961 convention enjoin upon the parties an obligation to take all such measures as needed to limit drugs, including marijuana, to scientific and medical purposes. They have so called penal provisions, which obligate states' parties to punish most forms of marijuana activity. The 1988 convention goes further in this regard and explicitly requires the criminalization of many forms of drug activity; again, marijuana counting as a drug.

Now, it is true that there's kind of a legal debate at the margins about exactly what that might mean for the United States, which has conditionally tolerated the creation in Washington state and Colorado of regulated markets for legal marijuana. And there are essentially two claims. One is that there is policy flexibility baked into these treaties; that the United States can say, as it did through the so-called Cole memo issued by the deputy attorney general, that the United States can pick and choose its enforcement priorities, and provided that those don't get offended, it can sort of stay its hand and see what happens with marijuana.

There's also a broader policy claim, namely that the treaties have brought objectives ensuring access to critical medicine, for example, and that the treaties give a lot of discretion to states' parties as to figure out to achieve those objectives. The idea is, in so many words, is that those objectives are essentially consistent or not inconsistent with a conditional toleration for marijuana.

Now, the United States has paired those arguments with kind of a long-term vision, and that vision is that the treaties shouldn't be changed. They are good as they are. And that all the international communities should sort of come together in a discussion and agree on a way to live within them while accommodating changing drug policy, chiefly that regarding marijuana.

The core of this is to say that these are living documents that need to be re-interpreted from time to time, but the world looks fundamentally different, and we should all just figure out that there's space in it that we can all accommodate, and I think that's essentially what the Assistant Secretary was saying there in remarks that John alluded to. That's the U.S. position in a nutshell; what its upsides and downsides point to?

In the short-term, this probably makes some pragmatic sense. There weren't a lot of good options for the United States. There had been a call in some quarters to bring a lawsuit founded on pre-emption, the doctrine that federal statutes trump contrary to state statutes, but that wasn't a sure fire winner. It was also not politically or economically a very smart idea to just send a trove of DEA and FBI guys into Washington and Colorado and just shut the whole thing down.

So, there's kind of a least bad alternative, difficult choice matrix kind of in play there that really does explain what the U.S. was up to. There's also the prospect that marijuana legalization may not work. It may go badly. It may stop and the trajectory may be reversed, and if that happens, the U.S. position is going to look pretty astute in the rear view mirror that by pausing, seeing what was going to happen and then waiting for the thing to play out, well, it didn't require any big adjustments to their international positions or any big adjustments to the international treaties, either.

The downside though, is that it might work. Marijuana legalization might go forward, and it might go forward smartly. In that event, it's going to be -- there's

already tension between U.S. position and the treaties, and I think that's safe to say. But that tension will only grow more acute, and the legal arguments get less and less persuasive the more marijuana legalization proceeds intelligently and if that trajectory holds.

That is why in a piece that John and I have written, we think that treaty reform should be on the table and not off the table, presumptively, because if the United States can claim policy flexibility in the treaties for so long as it needs to, then its treaty partners are entitled to no less. And I certainly don't mean to be alarmist by saying this, but that holds true not really in the drug kind of treaty setting, but also in other multi lateral regimes where the United States has pretty powerful interests in securing compliance.

I think most people would agree, we do not want Vladimir Putin in the business of claiming unilateral flexibility with nuclear weapons or something, even though again, that's sort of a -- that's an example I use just to illustrate the point. I don't mean to be alarmist by it. But that is the U.S. view and my appraisal of it, in so many words. I want to stop there because I don't want to take up too much time. I'll pass it on to Martin.

MR. JELSMA: Thanks, and yeah, thanks to Brookings and WOLA for this opportunity. I want to make three basic points. First, a little bit of history to the conventions that Wells already introduced, and specifically, the dubious nature of how kind of this entered into that system. And secondly, to show the wide variety of affections (sic) that aren't in practice already going on in different parts of the world. And finally, yeah, just some hints about how to read the reform; what the options are, and also, how potentially the special session in 2016 of the General Assembly on Drugs could be an opportunity to start a debate.

So, if we look back to cannabis was negotiated into the 1961 treaty, not

at a single convention where it's the one that's still also enforced; one of the three. I think the most important point to make is that it has not been done on the basis of a review of the WHO expert community. Now, this is how the procedure normally should operate. The WHO is mandated to give recommendations to the UN about -- yeah, in which schedule, which substance has to be put under control.

In the case of cannabis, no such review has been done. It was based -- the political negotiation and discretion was based on a working paper of the secretariat of the committee, which was -- yeah, not all for scientific nature. It had a lot of quite dubious statements, like not only is marijuana smoking per se, a danger, but its use eventually leads the smoker to turn to intravenous heroin injections.

Since then, those assumptions have been tested and proven at least questionable by a lot of scientific studies. But on the basis of that document, the political decision was made to put it in Schedule 1 and 4 of the '61 convention, and basically, on the basis of the sort of conclusion of that working paper that there is no justification for medical use of marijuana.

So, in the negotiations, there were several countries who tried to resist the inclusion of cannabis in principle, especially India and also Burma, where large scale traditional use and also, truly medicinal use was in place, and religious use, don't forget, in the case of India. Both countries -- yeah, tried to really prevent that cannabis would be included in the 1961 treaty. But yeah, decisions already at that time, now they were negotiated, and then on points where no consensus could be found, in fact, a vote was taken, and they basically lost the vote, so cannabis ended up in the system.

It is interesting to note that in June this year, the WHO expert committee had another working paper for the first time on the table on cannabis, and that said a review of cannabis and cannabis raising by the World Health Organization is necessary

for multiple reasons, the foremost being that medical use for cannabis appears to have increased in recent years. Cannabis and cannabis raising has not been scientifically reviewed by the expert committee since the review by the health committee of the League of Nations in 1935.

So, actually, WHO may start now a process of finally a first review of cannabis by this -- the UN expert committee. So, the second point. Now, since that treaty regime was negotiated and implemented, there have been many different forms of soft defection, including a country like India -- it did allow that in parts of the country, traditional religious use actually, yeah, could continue. They did negotiate also, one exception that's for the bung market, so cannabis leaves, actually, are not in the control of the UN and drug control conventions.

But also, in places where cannabis became more popular in the decades thereafter -- yeah, several forms of soft defections from the regime and decriminalization scenarios have evolved. The most known ones are, I guess, the coffee shops in the Netherlands, the medical marijuana schemes, also, here in the U.S. were implemented in such a way that it goes beyond the pure medical use, and the cannabis social clubs in especially Spain, but also in some -- now some other countries.

So, all these three models now have legal difficulties to be defended, but also, in terms of implementation, both the medical marijuana schemes in some states, at least, here, but also, it's happening now with the cannabis clubs in Spain. There is a certain legal space used, but then implemented in such a way that it goes way beyond the legal space on the basis of which is justified.

So yeah, that experimentation and these three models sort of have reached the limit of what you can possibly defend with applying the most flexible interpretation of the treaty system. So, that's where we are arriving now. No? Because

these decades of doubts and policy experimentation, these soft defections, legal hypocrisy have now reached a point where legal regulation is actually starting to happen and gaining political acceptability, even if it breaches the UN conventions.

These tensions between countries seeking more flexibility than treaties allow and the UN drug control system are likely to increase further, because the trends towards kind of these regulations, in my view, it appears to be irreversible, and I don't see it really going the other way. There are more states here that preparing referenda, but also, in some other countries, things are slowly but surely moving in that direction.

As Wells already explained, the U.S. is hesitant to acknowledge that -- the legal regulation in two states which is now happening, is actually a direct violation of the treaty system. Uruguay is also trying to find a defense to argue that it is acceptable. And yeah, what's starting to happen is that countries are digging a trench around the convention and the regime.

Now, also, in the preparations that are now starting for the UN Special Session, out of the fear, you know, that this is sort of the last line of defense. The holding in place, the last straw of the damaged façade of the broken global drug control consensus. This fear must be overcome. It is a normal thing for an international treaty regime to evolve. This system itself has evolved a few times, at least. In 1972, it was the U.S. initiative to start a whole series of amendments of the 1961 treaty, adding the next treaty was another example of an evolving system, because originally, the single convention was meant to be the single convention -- the only one.

So, it is evolving. It's curious, in fact, that this regime doesn't have a real in built mechanism for review and modernization. Most other treaties do have regular conferences of the party where such difficulties of implementing of the regime can be discussed, but also, possibilities of improvements can be easily discussed. And those

talks, conferences of the party happen regularly.

So in conclusion, you know, because what -- for many government officials -- you know, what a nightmare scenario is, is to now convene the whole world and to start negotiating from scratch in a whole new single convention. Those differences in policies are wide at the moment. It will be very hard to find the new consensus in any short time visible.

So, there are, I think, two basic points to make. Firstly, that the discretion about the inconsistencies and also, the legal conflicts with the treaty regime has to be an honest debate, even if it is acknowledged that it will be very difficult to get a new convention on the table. But let's at least, have an honest debate about it.

And secondly, there are also options for adaptation in the regime that do not require a full consensus of all the parties. Now, the WHO review is already one example, because if the WHO would recommend a de-scheduling of cannabis, it is -- a decision like that is taken by a simple majority, not consensus. There is also the possibility of countries individually or in group to withdraw from the treaties and re-adhere with certain reservations. That's a path that Bolivia has taken in the case of in (Inaudible).

And there is the possibility also, that a group of countries can sign an inter se agreement, where they you know, agree among themselves that the treaty is applied in a different way, while they still maintain their full obligations to all the treaty parties that are not part of the inter se agreement.

So, the regime has arrived at the moment of truth. And yeah, the question facing the international community that -- today, is no longer whether or not there is a need to review and modernize the system, but rather, when and how to do it. And I think that the UNGASS 2016 is at least a moment to start the debate.

(Discussion off the record)

MR. WALSH: Now, Wells has described the U.S. position currently. Martin has give us a brief history and brought us right up to date. Lisa is going to tell us about the impacts on the debate in Latin America. Martin already mentioned Uruguay has become the first nation to legalize and regulate marijuana. And then, Sandeep is going to give us a perspective from his perch, also, within UNODC. Lisa?

MS. SANCHEZ: Thank you very much. I would like to first acknowledge that I'm actually very honored to be part of this panel, so thank you very much for the invitation, and thank you for showing up.

As John said, my intervention here would be to provide some information on what is the debate going at the moment in Latin America and what are the possibilities for Latin America really joining or following the path that the U.S. states are, at the moment, following in terms of cannabis legalization.

I would start by saying that the conversation on drugs and drug policy reform, particularly in Latin America started already, although that particular conversation has found its difficulties to actually be translated into specific and concrete reforms at the domestic level.

So, most of the Latin American countries are engaged in this drug policy reform or drug policy debate -- are more engaged at the rhetorical level and at the international level than they are in actually modifying their drug policies. Although there are a couple of examples that are very useful to illustrate the impact that kind of is legalization in the United States had -- in some of the countries of the southern border, and that is, for example, the creation of political space for countries to have a real debate at home, and then, potentially, change some of the laws. The drug laws in Latin America are particularly draconian.

So, the first example, evidently, is Uruguay. As you know, Uruguay became the first country that legalized cannabis from production to sell and consumption. It's a very specific country in the sense that consumers never criminalized in Uruguay, and they even have a law -- they're authorized possession of prohibited substances in 1974, and that's a law that was recently amended to allow the growth and production of cannabis in the entire territory.

There are many challenges Uruguay is facing at the moment in trying to implement its regulatory regime, mainly because, let's not forget that even if consumption was never criminalized in Uruguay, Uruguay doesn't necessarily have the experience that the U.S. had, in terms, for example, of the creation of the industry of medical cannabis that is now the industry that's slowly transforming itself into the recreational cannabis industry.

So, we're starting from scratch in there, and there are, of course many challenges. Some of the people that are in the room are advisors to the Uruguayan government, and we're actually working on the very specifics of that particular regime, as for example, to adjust all of the regulatory tools that this regime could have, such as pricing and production and licenses, selling, whatever.

What's interesting in there is that the motivations behind drug policy reform in Uruguay were completely different as from the motivations that lead to cannabis regulation in the United States, and this has been the case, also, for other Latin American countries. The main motivation there is security.

Security, because the region has faced an epidemic of violence that has led, for example, in my own country, that is Mexico, through the decrease in the life expectancy of young males in one year, due to the homicide crisis in the country. And this is also true for Central America, and this is also true for some parts of South

America.

So, the main motivation for President Mujica to actually change drug policies and try to explore new alternatives was as a preventive way of Uruguay not becoming Mexico, and Uruguay not getting trapped into this narco traffic chaos that some other countries are already trapped in.

The other motivation that some of the countries that join this debate, particularly Mexico with the (Inaudible) Colombia is the complete acknowledgement or the recognition of -- have been made in the past, all of the possible efforts to fight the war on drugs and to go after the dealers, and to be punitive and very committed to drug control and seeing all of those strategies failing, not only because of the availability of drugs, but also like to the widespread of either new markets or new gangs, or the increase in the unintended negative consequences of the regime, and all of these externalities that these policies caused.

So, for example, in Mexico, the main motivation was after five years of President Calderon actually fighting organized crime and narco traffic, illicit trafficking in particular through the use of military forces in the country, what we saw was levels of violence increasing to a point of which we started -- we stopped counting our vets in 2011, when the counting was above 70,000 people killed and 26 people disappeared that we have no idea where they are. And most likely, they were disappeared (sic) by our own state agencies and our law enforcement agents.

So, after having those particular consequences, and like this narrative became very unpopular within the general public, but it also became the opportunity for a regime to actually start demanding for alternatives, because we had fought the war on drugs, and we've seen that this is not only not working in terms of drug policy objectives; we're not reducing demand, we're not reducing supply. But we're also causing a lot of

externalities.

That is also the case for Colombia. As you know, Colombia had fought this war on drugs for many, many years. As Mexico and Colombia did it with the support of the United States through Blanc Colombia and through Initiative America, they're not necessarily seeing the best results of this particular intervention, so they're also engaging the international conversation in terms of the need of reforming their systems and allowing some flexibility, as Martin was saying, within the conventions to actually try new approaches that could not only reduce the negative consequences or the harms of drug use and drug production and drug trafficking, but also, the social externalities and the economic terrible consequences that (Inaudible) had for our country.

There are a bunch of other countries that are not so vocal at the international level, but they are still discussing international policy and they are joining what we call the drug policy movement -- the drug policy reform movement. Some of them are Chile, for example. I was just in Santiago last week, invited by the Congress. They were discussing at the legislative level.

In particular, they were discussing cannabis reform, which is really important to say that even if Latin America has joined this international drug policy reform movement, we're joining it with the hope of reforming first, cannabis and drug policies and laws in the region in regard to cannabis; not necessarily we're having that conversation in terms of cocaine or heroin or other drugs.

But what's interesting about these discussions is that, for example, in Chile, what we're looking at is all of the models that were implemented in some other countries with medical cannabis. So one of the main bills that are sitting now in Congress, actually ask for the acknowledgement of the therapeutic uses of cannabis, and they're now trying to de-schedule cannabis from the list that it's currently sitting on, along

with cocaine and other hard drugs, as to reclassify it, acknowledging its therapeutic use and potentially allowing the growing of cannabis for medical purposes.

Chile has become one of the first countries in Latin America with Uruguay that had authorized the cultivation of legal cannabis for medical use. They're starting a pilot project that will actually provide cannabis oil and some treatment for cancer patients, so they're going to have a pilot in 2015 with 200 patients, see how that goes, and they just got the authorization of the government to actually do it.

Some other countries are reforming their laws, not necessarily as to legalize marijuana, but to allow, for example, the implementation of an effective decriminalization policy. That is the case of Argentina. That is also the case of the discussion that we're having in Mexico, and that's also the case of some Caribbean countries that are already revising their drug laws because of the massive impact and incarceration, and in particular, in fact, in the criminalization of young people and poor people.

But also, because we're actually becoming ourselves, a consumer region, as well, so we just sold -- or regimes at the domestic level or not necessarily prepared to respond in a humane way to all of the people that are starting using drugs. That is the case, for example, in Brazil. That has become the most important cocaine consumer in Latin America, and that is also the case for Mexico, who is starting to develop a low code demand for methamphetamine and other hard drugs.

Just to conclude, the legalization of cannabis in the United States has provided Latin America with some room to actually have this debate in a more open way, and to actually participate at the international forum, demanding for alternatives to be allowed within the conventions. But it has also -- you know, like raised some alarms in the sense that the two mechanisms that you authorized for recreational cannabis in

Colorado and Washington are very different from one another, and there are risks that most of our political elites are really aware of. I mean, for example, allowing a very commercial model of cannabis -- a legal regulation in our countries.

So, there are many challenges that we need to work on together, and those challenges are -- I would say that the first and most important one is you need to do it right, so other countries in Latin America dare to do it, as well. Because if it goes terribly wrong in here, there are no other countries in Latin America that will join this particular debate.

And then the second thing is that you really need to become more of -- you know, like public in saying that if you guys found that flexibility within the conventions, we Latin Americans are also allowed to find that flexibility in order to fight not only the drug cartels, but the violence of the unintended consequences that draconian drug policies have had in our region.

MR. WALSH: Sandeep?

MR. CHAWLA: Thank you. If I can start with -- I'll make three sets of remarks; some tied to the past, some tied to the present, some tied to the future. The three are very closely linked. In the words of the great poet, T.S. Eliot, time present and time passed are both perhaps, contained in time future. So, we have -- we can't separate the three, but I'll try and go over the three systematically in three sets of remarks.

Now, first, the past and how it conditions the present. We live in a multi-state system at the moment, which was formed in Europe in the middle of the 17th century. It's the Westphalian system, it's called. It gives absolute sovereignty to individual states, and in the international arena where the states come together, it has nothing. It has anarchy.

What has come in the place of that anarchy is a gradual, incremental

system that has developed over the years to regulate the relationships between states, which we now call international law. The basis of international law is the sovereignty of individual states, but what they do internationally is very, very difficult to control and only works incrementally, following the practice of states rather than leading it.

And after more than three decades of working for the United Nations, one of the things that I realize is that a term that we used all the time in the United Nations, which is familiar discourse here, is the international community. Now, this international arena is actually anything but a community. It's a contradiction in terms to speak of an international community, because nationally, countries are at variance with each other all the time.

In this international community which we've called for such a long time, there are equal states, but there are some states which are more equal than others. And the first among equals in this is the United States of America, because it is one of the most powerful countries in the world; probably the most powerful country in the world, and it has had a very, very distinct role to play in the drug control system and the international drug control regime that we are speaking about today.

And the reason for that is that drug control and American foreign policy are intimately related, because it was in the drug control area that the United States government made its first major intervention into international diplomacy. This happened at the beginning of the 20th century, and the history of the United States, of the international community, of the United Nations, and the context of ancient countries where it first happened is all intimately tied.

Because in 1898, following the Spanish American War, the United States acquired control over the Philippines. It was very difficult in the background and the history of this country to call it a colony, because the United States and its own self-

image is that of an anti-colonial nation. But it did acquire control over the Philippines, and in the Philippines, there was a serious problem with opium smoking.

That led to the United States government convening the first international conference on drugs. It was called the Shanghai Opium Conference, and that happened in 1909. That is the beginning of formal drug control, because that led two years later in 1911, to the first opium convention at The Hague.

The United States was so closely involved in the development of this international regime that its foreign policy became very closely tied to it, and from here, comes something else that is peculiar to drug control and to the United States, which is that in the context of the federal government and the states within the United States, the interplay between them, international drug control played a crucial role in this, because the federal government regularly used international treaties and the federal commitments of the United States government to be able to balance its commitments across the states, because it had no power over the states in some of these areas.

So, the drug treaties, as they were developed through the course of the 20th century, were frequently used by the United States government to cover all of its national territory. And this enabled a system, a drug control system to work. It also colored the way in which the United States pursued its international agenda at the United Nations, even though it was never a member of the League of Nations.

Its role in the League of Nations was influential. It was particularly influential in the United Nations, after the United Nations was formed at the end of the Second World War. And in the first treaty, the single convention, which Martin and others have mentioned on the panel -- the notion, the model, the vision of drug control that was incorporated into the single vision -- was the one that the United States had had a lead in developing since the Shanghai Commission of 1909.

In this, what happened was that states that signed the single convention, became in a certain sense, obliged to have national legislation that would support these conventions; these international treaties, the three that have been mentioned are not self executing. They need to have states. Once they become signatories, to have within it, some sort of national legislation that allows them to work towards it.

The model that was exported by the United States grafted onto the treaties, incorporated in the UN system of drug control was a supply control oriented model which emphasized more than anything else, the control of the supply of the drugs, and therefore, interdiction and eradication became a part of this model.

The situation of the users, the demand for the drugs was left pretty much to countries to regulate themselves, and it so happened that since the supply of the drugs that were being controlled was external to the United States, the emphasis became on controlling the supply of the drugs from outside the country. If for instance, alcohol had been incorporated into this, the supply would have been internal, but the battles with prohibition had already been fought in the first half of the 20th century within this country, and I don't need to repeat that history.

So, it so happened that the sources of supply were outside the country. The model of control became one that emphasized extradition -- sorry, eradication and interdiction and polarized the debate internationally, making this very unhelpful distinction between producer and consumer countries which poisoned debates, international debates on drug policy for over 50 years.

Now, in the situation which we have at the moment, and I now turn to the present with this, this whole debate seems to have done a full circle with Colorado and Washington, because now, with what is happening in these two states, the ground on which the federal government has advocated drug control internationally has now turned

very shaky. And if several states within this country move along the path of Washington and Colorado, then there is a danger that in the future, the emperor may have no clothes.

And the danger is one in which an international commitment will need to be adapted to face a completely different situation, because the policy of the United States internationally has always sought to occupy the moral high ground. With drugs, the moral high ground is the international conventions. If the support for the conventions is wavering within the country, then we need to deal with that reality, and the government of this country will have to deal with that reality in terms of how it pursues its policies internationally, since occupying the moral high ground, supporting the drug conventions has always meant that all the very significant power of the United States comes down against anybody transgresses the international system and against the conventions.

So, the power of the United States has frequently been exercised in soft terms, in hard terms, in different ways against any state that transgressed or pushed the limits of the conventions, whether it was against countries like the Netherlands, which defected from the conventions, but in terms of a soft defection, whether it was against countries like Bolivia, which tried first to amend the single convention, and then eventually denounced and re-acceded with a reservation, or whether it was against countries like Uruguay, but now the approach to Uruguay is completely different because of Colorado and Washington.

So, we have to move now into a situation in which the international leadership provided by the United States in the United Nations, among other areas, will have to somehow be adapted to these new realities. That adapting will be one which we will see very clearly in the UNGASS in 2016, a special session of the General Assembly, which is meant to look at this whole drug control system, and for us to try and anticipate what we can expect from this and what can reasonably be done before it, because we

need to have a situation in which something concrete and constructive can be achieved.

It's quite clear that in this, the considerable influence of the United States government can be used to pursue the idea of getting a constructive debate forward. What can we do in this constructive debate? First and foremost, I think it's clear, and now the concluding remarks about the future, at the UNGASS, it's quite clear that if we have another self-congratulatory exercise saying everything is all well and fine in the world in drug control, and we eliminate the drug problem and make our world drug free by a certain pre-determined date, well, that's not likely to happen.

Or, it may happen, but I hope it won't. I think there is enough happening in the world to prevent that kind of outcome. We can't expect another very optimistic outcome which is at 2016; the nations of the world will agree to revise the drug treaties. That's a very slow, cumbersome process, and that's very unlikely to happen, as well. But I think it is realistic to hope for the fact that we will have some genuine debate.

We need not come up with a binding declaration on all countries, but we can have some genuine debate about how the world has changed since these conventions were adopted. We can, through the UNGASS, allow for a certain amount of space and flexibility for countries to experiment with their own drug policies. This includes the United States with Colorado and Washington and what may happen as far as marijuana is concerned, and we may eventually get to the first step to remove what was quite clearly the most -- the weakest and the most vulnerable point of this whole control system, which was something that has been obvious for 30 years, but nobody has ever been able to do anything about it, because of the dead weight of multi-lateral consensus, and that was to include cannabis in the same control regime as heroin and cocaine and methamphetamine. That oddity of the system needs to be removed, and the UNGASS can take the first step towards it.

And finally, to move towards there, as I said earlier, I think the United States can use its not inconsiderable influence in this global arena to make sure that it doesn't go before the General Assembly of the UN the way Mark Antony went before the Senate of Rome to say of Caesar, but in this case, I'm talking about the conventions, I come here to bury Caesar, not to praise him. Thank you very much.

MR. WALSH: Thank you, Sandeep. Everyone has hinted at the importance of the 2016 UNGASS, the Special Session on Drugs. It's also worth mentioning that in 2016, it's very likely that California, among other U.S. states might also be voting by popular initiative on whether to legalize and regulate cannabis. Other states may do that in the meantime.

So, my question is to all of the panelists, why do the treaties matter, then? The United States is moving ahead anyway. It's asserting that flexibility exists, whether or not a close read of the treaties suggests that or not. Uruguay has moved ahead. Why should governments, at this point, care about the treaties? And why don't they just move ahead with the flexibility that now has been de facto declared by the United States?

MR. BENNETT: I'll take a stab at that one. I mean, I'll just elaborate on what I said earlier. But treaty law matters. All nations, when they make deals with one another, depend upon treaties to regulate things they do and their relations with one another. So, if you invoke the need for flexibility in this treaty, well, how much flexibility exactly are you talking? Does it stop with this or does it continue to something else?

Does one or two parties, do they share your view about flexibility, or is it a -- does it go a little bit more broadly in this regime or in other regimes? Are you going to have a more difficult time protesting when there is another multilateral regime out there that regulates something no less significant than drugs? Are you going to have a more

difficult time saying, you know, wait a minute. You don't have that kind of flexibility.

That's what the treaties say.

Martin alluded to this earlier. One of the nice features when you have a kind of constant democratic dialogue among parties to treaties, when you have constant conferences and those sorts of things is you can kind of have this refreshing sort of function and keep that going, and maybe even update your commitments as need be. But what's going on here is, you know, you're having the conversation about this tension between treaties, which pretty much, people agree is only going to get more visible and more acute over time.

And the more time it goes on, that's just a lot of open space for you to be claiming flexibility and for other people to be taking more flexibility than you really think is warranted. So, pick your favorite regime where you really don't want someone else to be having that much flexibility. It can be nuclear weapons. It can be the environment. It can be counter terrorism cooperation. I mean, take a pick. I mean, there's different rules out there, so maybe in their particulars, this treaty language might not necessarily resonate so much in that treaty. But still, the arguments, in principle, are the same.

MR. WALSH: Martin, I don't know if you see it the same way?

MR. JELSMA: Yeah. If I can add just a few comments. In the first place, I do think that all of this talk now about using the flexibility of the treaties is, to a certain extent, a positive thing. You know? At least it confirms all the flexibility that the treaty regime really has and that should be used as much as possible for countries to explore other drug policies not only in the case of cannabis, but that there are also countries who you know, start with a medical prescription of heroin to very problematic user groups or consumption groups -- that there are other elements of drug policy where experimentation takes place, where the tension with the treaties is also brought to the

table.

So, to stress that there is a considerable amount of flexibility is a useful thing. At the same time, there are clear limits, and I would suggest that now that this is happening in the case of cannabis regulation, which goes beyond the flexibility that the treaties allow, that it should not -- or the effects that it does break sort of the provisions of the treaties should at this point in time, not be the argument for countries not to go ahead, because it is done for valid purposes.

It is done because there were historical errors in the treaty regime. So, it should not be an obstacle for countries to proceed, but it has to be clear that a debate about it has to be honest, and that is in part because of the eroding effect for international law; more generally, if countries are starting to take an a la carte approach to just you know pick some things of the international law that they like and they comply with, that's an undermining thing to happen.

So, the debate is important about it, and yeah, there are also potentially positive outcomes of a modernization of the system where it can actually bring improvements to a control system that no one wants to just completely throw away.

MR. WALSH: Lisa and Sandeep, I don't know if you want to comment on that.

MS. SANCHEZ: Just one very quick comment. It's not only about because they are the rules of the game, and they have a very strong, at least symbolic importance in Latin America, because they have been used as the main element to justify the securitization of the agenda and the militarization of many countries, but it's also important because it's the opportunities that countries have to actually correct some mistakes made.

And if the United Nations itself had acknowledged that there are several

unintended negative consequences that emanated out of the international drug control regime, and if the international drug control regime is defined and defended by the conventions in all of the mechanisms authorized by the convention -- so I think it's very important for us to have this conversation, and then, allow the possibility for countries to take new approaches that might reduce those externalities and those consequences. And I'm not only talking about violence, but I'm also talking about substances placement and (Inaudible) discrimination around drug users and the people that are involved in the drug kind of like productive marketing chain.

MR. CHAWLA: I think if one speaks about honest debate internationally, about the issues that we are discussing, then you have to pay some attention to the forum within which the debate will take place. The forum for this is usually the United Nations, somebody of the United Nations, whether it's the General Assembly or whether it is, in the case of drugs, a body that meets regularly in Vienna which is called the CND, the Commission on Narcotic Drugs.

The difficulty with debate in these contexts is that we think of the United Nations as a monolithic body. Now, it's very large. It's not very monolithic. It has a lot of different organizations within it. It also has a further distinction within it that is made between the states' members of the United Nations and the permanent secretariat that sits in a large bureaucracy to service these states members.

I was a member of that bureaucracy for a very long time, and the one thing that I see very clearly is what the secretariat may say, may write, may publish, may put into reports before the membership of the United Nations does not necessarily equate with what the membership of the United Nations will decide to do in a debate or a discussion. And usually, when it comes to a debate or a discussion, what happens is, the lowest common denominator is adopted to cover for the fact that there are differences

between the membership.

And so either you get to deadlock and nothing happens, or you do the next best thing where you have fundamental divisions between the membership, which is agree on the lowest common denominator, because that will, at least keep everybody in the tent and not throw any one country out of the tent. And this difficulty is what we need to confront as far as the upcoming UNGASS is concerned or the question of treaty reform is concerned, because as Martin has just pointed out on this panel, the place at which there is very little flexibility in these treaties is on cannabis.

That is going to need a change, but we can make the first steps towards that change and we can allow for much more space. On the other side, there is enormous flexibility in this treaty system. The problem is not the flexibility. The problem is the unspoken assumption and the cultural underpinning of the way in which these treaties have been implemented in the world at large.

And the way that they've been implemented in the world at large has emphasized the prohibitionist supply control oriented vision of these treaties, and pretty much left to default the other part of this, which was the health and welfare of mankind, the rights of users, the demand for the drugs and so on, and this can change. And this flexibility has always been there. But on cannabis, we have to take a stand.

And here, this is the place at which the space given to countries can be used positively, but the multilateral consensus is very unwieldy and very slow to move forward on, but one can do it. And what one has to, I think, guard against is the fact that there are too many vested interests in the world in favor of keeping the present system ticking over as it is. And those vested interests need to be tackled.

It's not necessarily negative. Everybody in this is well intentioned, but there are huge bureaucracies in all the major countries of the world, in all of the small

countries of the world, in the United Nations, in international organizations who all face that one real paradox in their existence, which is if you create a bureaucracy to solve a particular problem, then if that bureaucracy solves the problem, it is out of a job.

So, if you have real development in the world and we eliminate poverty, well, then this whole international construction for development will all have put itself out of a job. And this may sound cynical, but this is something long-term which we have to look very carefully at.

MR. WALSH: I think our panelists have all give us now a pretty clear sense of the major repercussions of what the voters unleashed in Colorado and in Washington in 2012, and what more may be to come. I think we'd like to open now to your questions from the audience. We'll have microphones going around. We'll recognize a few questions at a time, and then take it back to the panel, and let's get several waves in. We still have a full half hour. Thank you. So, we'll go up front one, and then two, Mark Kleiman, and then three.

MR. CECIL: Good morning. Thanks for being here with us. So, my name is Scott Cecil. I'm with Students for a Sensible Drug Policy. And Election Day is in 18 days. And as you're no doubt aware, voters in Alaska and Oregon will be voting on tax and regulate marijuana; voters in Florida will be voting on medical, and then a number of places, Maine and Michigan among them and a lot of municipalities will be voting on decriminalization.

But of course, those of us who live here in D.C. will be voting on Initiative 71. But since D.C. law does not allow for ballot initiatives to change tax policy, it's not a tax and regulate initiative. It's just legalization. And so my question to you is, what -- in what way will this further the tension between U.S. drug policy and the international drug control regime, since very likely, the D.C. City Council will take action to implement tax

and deregulate system once we pass this, which probably will pass overwhelmingly.

And then, potentially, members of Congress, then, would have to weigh in to approve the changes to D.C. law, which would put every federal lawmaker on the record, yes or no for legalization. So, how does that further the tension in a way that's different than tax and regulate at the state level?

MR. BENNETT: I'll take a stab at it. I'm not too sure it's different in kind than the other tax and regulate regimes, simply because there's the Home Rule Act, although I think you know, you're -- I'm not an expert in D.C. politics or federal politics by any measure.

But obviously, if you have the prospect of Congress people weighing in on the propriety of D.C. policy, it's going to raise their eyebrow. But the tension is not literally -- as a technical matter, the tension exists because of federal priorities imposed by the executive branch on the Controlled Substances Act. So in that respect, I'm not sure there's going to be too huge of a difference, although I think you're right that there is a difference, at least, just because you know, there is no Darrell Issa involved in the Oregon situation, you know, at that point.

But bar that, it's just another sort of notch in the belt of a place that will or won't comport with the objectives outline in the Cole Memo. And there's an open question as to that, so if you get legalized and it goes tax and regulate, if you tax and regulate in a sufficiently rigorous way, in theory, you meet the criteria set forth in that document and then federal prosecutors will stay their hand there just as in theory, arguably, they would have no principal basis for proceeding here, but not proceeding in Washington and Colorado.

So, I think you're -- you know, at the margins, I see your point. But I think in terms of the tension for the treaties with international law, it's just another move in

the direction of more tension and more things it'll have to address.

MR. WALSH: Let's take a few questions at a time this time, and then return them all to the panel. So, we have Mark Kleiman, David Borden and then Tom Glickman. We'll take three, and then we'll come back for more.

MR. KLEIMAN: Just to follow up on that previous question, it seems to me the tension is that the states are semi-sovereign, while D.C. government is a creature of the federal government. It's hard for the U.S. government to say, well, we can't control what our own creature is doing.

Just two or three comments on the general discussion, two specific and one sweeping. First, the notion that we can flexibilize (sic) our way around the treaties is somewhat attractive. But in fact, doing that is going to lead to very bad policy; in particular, state monopoly retailing, which seems like in many ways, the best way to deal with cannabis, involves far more fundamental conflicts. And the states can't do that while the federal controlled substance act is in place. So, I think there's a big cost to trying to dodge and weave.

Second, the question of whether cannabis belongs in a schedule with heroin, cocaine and methamphetamine is an important one, but it's important also to notice that the general idea that drugs with medical utility are somehow risky and should be punished less seriously than drugs without medical utility really makes no sense. Heroin, cocaine and methamphetamine all have great medical utility.

And the whole notion that there are medical and non medical drugs needs to go out. I mean, caffeine is not a medical drug. We really need a -- I'm not saying we can get to it, but to have a sensible regime, we'd have to get rid of the whole idea behind scheduling and do it a different way. Now, here is the sweeping one. What do we need these treaties for? What are the states constrained from doing that they

would do that internationally, we need them not to do, other than connive at exports of forbidden substances to countries where they're forbidden? Do we need an international treaty that says anything more than don't do that?

Now, I mean, I ask that as someone who doesn't understand the international drug control regime, but I'm waiting to hear somebody tell me what would be worse in the world if those treaty documents disappeared tomorrow?

MR. WALSH: We can go back to David Borden and then up to Tom, and then we'll go back to the panelists. David?

MR. BORDEN: Hi. David Borden with Stopthedrugwar.org and the Drug War Chronicle Newsletter. My question is about how much potential does a re-interpretation have in legal terms for -- I guess two examples. One, if nations at UNGASS were to adopt an interpretation that seems, on its face, to conflict with the treaty language, but it got adopted, does that effectively change the treaty?

Secondly, over time, if interpretations conflicting with treaty language or not, just gain sufficiently broad recognition, does that effectively change treaty law, or is that a stretch?

MR. WALSH: Tom, did you still have a question?

MR. GLICKMAN: Good morning. My name is Tom Glickman. I work with the Transnational Institute. I'm trying to combine two comments we had on the panel where Martin was hinting at, at having a COP process around the treaty system, and what Sandeep was saying on the difficulties of changing the institutions around the conventions. And this is specifically for Sandeep.

Do you think if you would like have a COP process, a Conference of the Parties process, would that significantly change the way the United Nations is discussing about this issue? And would that increase the possibilities for reform?

MR. WALSH: Great. Let's go back to the panel. And Martin, if you'd be comfortable starting?

MR. JELSMA: Yeah. Let me take up Mark's challenge; what would be worse in the world of these treaties would disappear tomorrow? And in fact, it is not that easy an question. Of course, we have to realize that these treaties, they are not only about cannabis and cocaine and heroin that everybody associates with it.

Just know that there are, in total, about 350 substance scheduled. All of the major medicines, opiates are all there. The diazepam. This is also controlling all -- yeah, it's also trying to divert -- prevent diversion from the pharmaceutical industry and the whole prescription system, et cetera. And in fact, that is where the origins of the treaty system come from, and that original thought was a useful one.

At the time of the pre Second World War, the situation was that also, all the heroin, morphine, the cocaine -- it was all produced licitly. You know? The main cocaine producers -- the manufacturers were in Amsterdam. It was Formosa and Indonesia were the big plantations. And at that point in time, there was no such thing as illicit cultivation or illicit production.

And it was, all these things had had a balance between medical users and not so medical users, even though the boundary is not at all clear. You know? There's a sort of self-medication, or a lot of use of these substances in place where other medicines are not available. But the attempts to limit production to estimates of what is needed for medical purposes, for illicit purposes, I would also want to include other types of use in the category of illicit use.

It was a useful thought. And they're the first instruments that were negotiated, fully focused on the whole system of export certification, pre-export notification, estimates of requirements, limitation of production. So, yeah, it was focused

on limiting production and a system to somehow reduce -- bring under control, international trade in these substances.

And I think that is still the part that has a useful purpose. I think after that, it went way too far in the details of obliging countries to adapt their criminal justice systems and criminal law, also towards possession of personal use and -- I mean, that is where the treaty system became far too -- yeah, it went too far in the details and too obligatory for countries to adapt to its national legislation.

But yeah, somehow, going back to the origins of the usefulness of a system to have control over international trade of these substances and you know, to try to not have a huge diversion of substances that can bring people into difficulty. It's something I still think is worth preserving.

MR. WALSH: And now, while you're at it, if you want to respond to David's question about the UNGASS and to Tom's question about the Conference of Parties, and then we can turn to the other --

(audio skip)

MR. JELSMA: Actually, yeah. The question whether interpretation can -- if it is agreed among -- at, for example, the UNGASS, whether that could have the effect of treaty change is -- well, it's one of the questions that we are going to discuss in the days to come with a group of international lawyers. And of course, it has been a difficult one.

There has been a special United Nations repartee in these past two years, specifically on treaty interpretation and also, looking at exactly that question, to what extent, if it is agreed among the parties that interpretation is -- historically has evolved. If there is full agreement among the parties, it can have a similar effect as an amendment, basically. And then, well, the question is why then not just make an

amendment, but because it does require the full consensus of all of the parties of the treaty.

And if you get it that far, that everyone agrees at the UNGASS to interpret the treaties that legal regulation of cannabis is no problem under the treaty regime, that's a consensus that is as difficult to find as convening a conference of the party and renegotiating and taking and cannabis out of the treaty system altogether. So yeah, that's difficult.

But I do agree that there are sort of margins where interpretative statements of groups of countries can help to at least gradually evolve the implementation of treaties. But I think the prerequisite is that it needs to be a legally precise and honest debate, so the starting point is not -- this is allowed. No, the starting point is -- no, the treaties do not allow this.

And from there, you can start to question and then, start to look at what re-interpretation is possible. But from the acknowledgements that it is an interpretation that is in violation of some of the provisions, yeah. And one of the other areas where it can evolve is to argue legal contradictions with concurrent treaties -- with the human rights treaty regime. Bolivia has done that, I think, quite effectively with the conflict between the 1961 convention that obliged this country to abolish the traditional chewing of cocoa leaves. That is a clear conflict with the indigenous rights where traditional practices are protected.

So from that, yeah, indeed, you can -- from the legal conflict between different treaties, you can also derive solid arguments to either amend the treaty or to say, well, if it's a human rights issue, human rights law takes priority over everything else. I'll leave the COP thing to Sandeep.

MR. WALSH: Sandeep?

MR. CHAWLA: Thanks. If I can just quickly reflect on the issue of the COP, but the other ones, as well. If I can start with Mark's provocative question which Martin, in my view, has answered very well. The only thing I'd like to add to that is the fact that times change. Countries change. And we have a quite different situation now from what we had when these treaties were formed.

And we have to deal with that changed reality in the context of a multilateral system which is very good in many parts of regulating things in the world, but tends to become onerous in some areas, because the situation has changed. If you look at the way it has developed historically, for example, the Cali and the Medellin cartels were not the first drug trafficking cartels in the world. The first drug trafficking cartel in the world was the British Empire running opium to China. But times changed.

And that same British Empire then became an enforcer of the international system of control, just the same way as if you want an international regime where there is something like the rule of law in most of the areas in which nations relate to each other, that's when you have a treaty system. To change that treaty system is very, very difficult, because making a multilateral commitment is much easier than breaking it.

In the individual country, you can break it unilaterally, but generally speaking, the weight of all the others will come down against that country because everybody draws some benefits from this multilateral system. And individual countries have always played the role of trying to go out of it -- to go out of the tent, because it suited their interest, and the majority has always tried to bring them back in or put sanctions on them and keep them out, and the system, by and large, works.

As Martin explained, the whole thing about the regulation of the medical area was what is behind the convention and the treaty system. Now, if you talk about

changing that whole thing, then you have to make one other concession, as well, which is to deal with the realities of why on earth do we have a completely different regime for dealing with the other two big, powerful psychoactive substances, alcohol and tobacco.

And were we to start with a blank sheet of paper, I would suggest that we put alcohol, tobacco and all of these psychoactive drugs into the same control regime and move onwards. But we can't do that, so we have to deal with the limits of the possible. And the limits of the possible are within that treaty system to find areas of flexibility, whether we can gain something by having Conferences of Parties in a very unfortunate abbreviation that we use in the UN, they're called COPs. (Laughter)

And these Conferences of Parties -- and Tom's question about whether something more can be achieved, yes, I think what can be achieved is that we should be able to move incrementally forward in these debates through regular Conferences of Parties. The problem is, with the most difficult of the three drug conventions, the 1988 convention, there is no monitoring mechanism for it. It's peculiar in the sense that it doesn't have one.

I think Martin pointed that out earlier, or maybe he did yesterday, but there isn't a monitoring mechanism. So, you could get one for the single convention. You could probably get one for the psychotropic, the 1971 convention. But for the '88 convention, there isn't a monitoring mechanism. There's no evaluation mechanism either, so it's difficult. And that brings me to the last point about the change in treaty law and what would happen if the General Assembly, for instance, or the UNGASS made a series of declarations that were not necessarily in conformity with the single convention or the psychotropic convention.

This is a big problem in international negotiation. And the problem stems from a distinction that we make in international law between hard law, which is a treaty or

convention, and soft law, which is the expression of statements of intent or, for instance, adopted by a resolution of the General Assembly. This sets standards. It sets norms, but it does not have the status of law.

We have a peculiar problem worldwide over the death penalty. All of you know about it. There is a moratorium created by the General Assembly which asks states which still have capital punishment to not use it, except in the most severe cases, and to encourage states to move into a system in which they abolish it. But that is soft law.

It is not in the status of a treaty and hard law. So, whatever the General Assembly may adopt will be soft law, and then, there's the other problem, one which I've spent so much of my career facing or dealing with, and I put it on the table, because there's a predicament created here, in which when you see the states members of the United Nations in any meeting adopting a resolution of writing or agreeing on something, and you, because you happen to know the situation see that that flatly contradicts something that they have agreed to last week or in another forum, and you tell them so, you are then in the predicament of being a secretariat that is not being passive, note taking, sitting in the corner and doing what member states tell you to do.

And beyond the point, you can't do it, and so, member states frequently in the UN system adopt declarations which contradict what they may have agreed to the week before, or what another part of their government negotiated, because very often, with big governments and big bureaucracies, the left hand doesn't know what the right is doing.

And then, you end up with the very messy reality on the ground of statements that frequently contradict each other, and with just our three drug conventions, if one sat down and looked at it, one could come up with a very long list of

points in which they contradict each other. So, it's messy on the ground.

MR. WALSH: Let's add to the messiness now. I'd suggest another round of questions. We'll go back to the panelists, and then give everyone a chance to wrap up. We'll try to get every hand I see now. The gentleman in the yellow tie right here, midway. The woman a couple of rows behind him, a gentleman up front and the gentleman in the cowboy hat.

QUESTIONER: Thank you. My name is (Inaudible). I'm the Netherlands Embassy here in Washington, D.C. I'm going to violate your rule about asking questions and make two quick remarks.

I've been asking this question about the relationship between marijuana legalization in Colorado and Washington in relation to international law at many panels around town in the past two years, and I think this is the first panel that actually addressed the question. Usually, it was only about state law versus federal law, and the panelists would say, we don't know much about international law, so we will leave your question aside. So, my question finally has been answered, and I acknowledge -- I thank Brookings for organizing this, because it's, I think, a very important debate to have.

Secondly, I would like to thank the panelist for indeed, acknowledging that marijuana legalization is problematic in relation to these treaties, and I think it's a very important debate to have and an important acknowledgement that is important to have this further discussion leading up to the UNGASS. So, thank you to both Brookings and the panelists, and we hope to hear from some of the -- from the administration to see what their opinion about these legal aspects is. Thank you.

MR. WALSH: The woman a couple of rows behind him.

MS. ZORBIS: Hi. Eugenia Zorbas from the Department of Political Affairs in New York. I think that in the scenario of incremental adaptation and updating of

the regime as opposed to starting again from scratch, the nightmare scenario we discussed, an important piece of the puzzle sounds to me like it's rescheduling, cannabis, for example.

And we know that the WHO has a treaty mandate role in that regard and has an expert committee that forwards recommendations to the decision making body, the CND in Vienna. But we also know, I think -- and this is where you can fill us in, that this has actually happened in the past this year -- the WHO's expert committee has, I think, at least on two occasions already recommended or attempted to that cannabis be rescheduled in a lower, less stringent schedule. And for various reasons that I hope you can tell us a little bit about, I don't think it has even reached the CND, that recommendation.

So, what do you think is different today if that were to happen? Could that happen again? And if it did, what is different today? I suppose the U.S. would have a different position. But is that a viable mechanism in the incremental scenario regime adaptation we're discussing? Thanks.

MR. WALSH: To push the envelope, we have the gentleman in the third road, the gentleman in the cowboy hat and a man in the back there, and we'll close the questions and go back to the panel.

QUESTIONER: I'm Eddie Edmunds, the former ambassador of St. Lucia, a small island in the Caribbean. If I may stick to the topic, which is the international impact of U.S. trend towards legal marijuana. Some of our leaders in the Caribbean are of the view that since the question of marijuana use -- and indeed growing -- I understand in one state in the United States, very, very, very large production of marijuana, and the federal government has no control over the laws of that state. Yet, the United States goes and sprays marijuana fields in other countries, small island states,

as well.

Now, this causes a lot of confusion on the part of countries, particularly the small island states where we once produced bananas and we exported to the United Kingdom and to Europe. But because of the WTO ruling, we lost the strain because of the pressures from Dole and Chiquita, et cetera. It's a long story.

But our growers found a crop which was economic. It became economic to grow marijuana to suit a trade, the demand -- the United States of America. We have not been able to find a substitute to marijuana. It's growing very well and they're making big monies off of it, and no substitute to marijuana has been suggested or recommended. So the question is one of supply, one of demand, one of economics, one of the perception that if in the United States you cannot control the growing of marijuana in certain states, and in fact, some states are ready to rule on the use of marijuana, the confusion arises. And so, the topic, the international impact of U.S. trade comes into focus.

And the final question is, how do you define recreational marijuana with a lot of people all over the world using for that purpose? Thank you.

MR. WALSH: The gentleman with the hat. And if we have no further questions -- we have one other question back here. We'll get those two; go back to the panelists and have concluding remarks, as well.

MR. WOOLDRIDGE: Howard Wooldridge, co-founder of LEAP, Law Enforcement Against Prohibition. A comment and a question here for Ms. Sanchez. As a street cop, I saw that the drug prohibition was the most destructive, dysfunctional and immoral policy since slavery and Jim Crow.

My question for Ms. Sanchez -- I was at the conference in Costa Rica last month. About 300 people, even the panelists -- almost all of them in favor not of any

legalization, but they wanted a grand discussion, a grand debate. My question for you about Mexico, is there that same sense in Mexico, it's time for a great debate on this issue?

And also, is there -- how much support at this moment would there be for changing the laws? I know your president said, I don't want it legalized, but he's open for the big debate. Are his sentiments roughly the same as your other folks in the Pueblo?

MR. WALSH: Last question in the back?

QUESTIONER: Thank you very much. My name is Peter (Inaudible), and I'm a professor of criminal law and criminal procedure law at (Inaudible) University in the Netherlands. I'd just like to make an observation, because I saw the sweeping gentleman that the gentleman just before me conveyed his question.

What is the -- what would be the problem if we got rid of the conventions today? Martin already gave an explanation to that, but I just would like to add something to that, and that is that the conventions, and specifically the 1998 illicit drug convention is also the basis for a lot of cooperation between states in criminal cases. So, that would mean if you would get rid of that convention today, then it would be very difficult to cooperate in criminal cases between countries in a lot of instances -- not in all instances, because there might be other treaties available.

But if there are not, then it would be very hard to criminally cooperate in criminal cases. So, that's something I think we should keep in mind, specifically because the treaties are not only about cannabis. Thank you.

MR. WALSH: Return to the panel. Wells, if you want to begin.

MR. BENNETT: I can't remember. I'm trying to take the questions in reverse order, but the gentleman in the front -- at least I'll try the one. If I understand what you were saying, it's the position of the United States, as it's not empowered under

its Constitution to commandeer states either to enact or to enforce federal law, on the one hand. But on the other hand, the United States is going abroad spraying marijuana fields in states such as you are represented by.

I suppose if what you're saying is there is some moral hypocrisy there on the part of the United States, I think you're correct. So, I understand your point. I would only add, there is something of a resource scarcity question in play, and I don't say that because it makes me feel any different about -- it doesn't change my point at all, but the United States view, vis-à-vis Washington and Colorado is not merely that they cannot commandeer the states; it's also that they lack their own federal resources, and it would be a political debacle to enforce federal statutes in Washington and Colorado, which on their face, prescribe the very activity in which Washington and Colorado law now authorizes.

So, it's not quite as subtle as them saying, hey, we can do nothing. That sort of almost proves too much they in fact, could do something, but it would be politically untenable and probably unattainable as a practical matter, because there simply aren't enough people in the DEA to sort of convert the U.S. Attorney's offices in those states and any successor states into the sole clearinghouse for marijuana enforcement there. But bar that little tweak, I understand your point. I agree with it.

There's one that was directed to you, Lisa.

MS. SANCHEZ: Yeah. Well, I'll take the opportunity to respond to both questions. It is very important that the United States acknowledge and the people here acknowledge like these contradictions between domestic policies and domestic decisions, and decisions being made at the international level.

The U.S., for example, continues to publish the list of the 15 countries that represent a threat to the domestic U.S. drug policy, because of their production of

illicit drugs or illicit cultivations. And Mexico is on it, and many of the Latin American countries including the Caribbean islands are in that particular list.

And that is evidently not neutral, and that comes with all the mechanisms, mostly bilateral mechanisms that continue to force our governments to pursue punitive policies or to continue to -- you know, like fighting the war on drugs. One of the most big and representative examples of this particular foreign policy that the U.S. is still committed to fight the war on drugs, is the drug courts that are like literally exporting to many countries in Latin America.

And this is continuing the trend of criminalizing drug users and continuing the trend of making, for example, treatment a judicial obligation; meaning that the drug issue continues to be dealt with at the judicial and criminal side of the state, rather than from a public health perspective, for example. And that is not neutral and it's very harmful.

On the question of how is public support in Mexico -- and if that's the sense of you know, the general public and the government, that we need to have a further debate, yes. Public support had been growing in Mexico, particularly because like the preliminary results that we're receiving from Colorado legalization is that the sky didn't fall, and the Armageddon didn't arrive, as most of our politicians claimed that it would happen.

So, public support is growing, although it's very important to say that Latin American societies are very conservative societies; and that the role of the Catholic Church, for example, continues to be definitive in shaping public opinion, particularly in regards to use. And so that's one of the main reasons why the conversation in Mexico and most of Latin American countries continues to be this of prohibition versus liberalization of drugs, which I think is not useful, because no one is necessarily

liberalizing drug markets. We're legally regulating drug markets, which is a very different conversation.

In terms of the international role that Mexico could actually play for the very first time, our president, Pena Nieto, told to the international media, to *El Pais* in Spain, that even if he personally disagrees with cannabis legalization -- he's not a personal supporter of it, if California votes its ballot in 2016 and legalizes cannabis, then Mexico will need to revise its own drug policy, because it will be a terrible contradiction to have the same substance prohibited on one side of the border and completely legal on the other side of the border, knowing that most of the international -- you know, like the conversation has been about international trade and illicit trafficking.

That's not to say that that particular statement has not translated into domestic commitments of actually revising stuff. And the only thing that we have as a formal commitment from the Mexican government is to revise a small trafficking law which had criminalized users more than had benefit or moved our country towards a decriminalization model.

MR. WALSH: Martin?

MR. JELSMA: Yeah, let me take two points that were raised. First, Eugenia's question about the WHO and cannabis review. The confusion is that what's -- cannabis is scheduled under the 1961 convention. The WHO expert committee has never reviewed cannabis and has never done a recommendation for cannabis under the '61 convention.

The weird situation is that delta-9 THC, dronabinol, the active ingredient, the main active ingredient of cannabis is scheduled under the 1971 convention. That's an inconsistency. It's completely absurd, but for that particular -- for dronabinol, the WHO expert committee has indeed already three times given a recommendation, and the

whole political turmoil about it was that, you know, if we deschedule the active ingredient of cannabis to the lowest control schedule under the '71 convention, what would that say about cannabis itself?

And it would immediately show the discrepancy between the two. So, that was the reason, first, that indeed, the recommendation twice was simply not passed on to the CND, which is procedurally a very dubious thing that happened. But this year, actually, the Dutch government in the CND in Vienna pressed for, finally, a vote on the recommendation, and there were, in the end -- I would have to look back, but I think around -- it was defeated.

It was, I think, 18 in favor or so and under the '71 convention, it requires a two-thirds majority vote, so it was all. By far, it didn't make it, and that does raise questions now, about what would be the fate of the political vote about a real cannabis recommendation for cannabis itself under the '61 convention. It looks like as if it were done today, it could have had a similar fate as the dronabinol recommendation, and also be defeated, even if it only requires a simple majority under the '61 rules.

Still, I think cannabis developments are moving very quickly. If the review starts now, then it will -- it probably won't even be on the table before the UNGASS, so that's all -- that's a big -- it's too bad that a country not already (sic) has submitted earlier a simple request for a review, because it just requires one country who puts it on the table and points out to the fact that the WHO has never done a review of cannabis, and just ask them to do it. That's enough for the procedure to really start moving.

So, now, because we still don't know what the expert committee actually decided, whether they are starting a critical review or not, that will come out in a few weeks. But anyway, I still -- I am convinced that it is useful to start a procedure, because

it is important to have a WHO recommendation, even if it is voted down, at least we know that the formal treaty procedure is followed, the WHO has given a recommendation, and then we know, at least, you know, what the WHO thinks about the current cannabis legislation in the '61 convention. So, only for that, it is worth doing. But yeah, in a few years' time, I think the cannabis panorama in the world will have evolved so much that there would also be a good chance that actually, by then, the vote may make it.

And one short additional comment on the St. Lucia issue, because apart from the hypocrisy element, there is also the important point that was raised that the legal regulation scenarios that are now happening are fully based on domestic production. It doesn't give space to also regulate imports from where now part of the illicit flows are coming from.

And I think it would make perfect sense to start lobbying, also, for that. You know? That's the pure import substitution model, I think is for developments -- where development arguments is a bad thing to do. The same point will start, no doubt, as a discussion in Mexico the moment California takes this step, because now, still, quite a lot is coming from Mexico. You know?

MS. SANCHEZ: It's less and less.

MR. JELSMA: It's less and less, yeah. And actually, the same debate -- yeah, we are starting to also get on the table in the cases of Spain and the Netherlands, because import substitution is not the full solution in the case of a legally regulated market, because the Moroccan hashish is still in those two cases and for the whole of Europe, a substantial part of the market. And it also has to do with -- it's a better quality product. It has a different balance, THC, CDD. It's even healthier than some of the weed produced in the Netherlands.

So, there are advantages for keeping that part of the market, also, but it

requires a form of legal regulation that also allows regulated imports from some of the other countries that are now producing for the illicit markets. And we are much in favor of looking at those possibilities that -- also, for international trade to allow that in the regulatory models.

MR. BENNETT: Just to add just a little detail on that, which is there -- the longer you have a domestic -- a permissible domestic regulated legal market but you still askance at all material produced abroad as part and parcel of illicit international traffic that must be suppressed -- I mean, you put your finger on it. But sooner or later, you're protecting a U.S. domestic market. And that's obviously the intention with more than one U.S. diversion.

MR. WALSH: Sandeep, I don't know if you want to add anything or go to your final thoughts, closing remarks, and then we'll come back down the panel and wrap up.

MR. CHAWLA: Nothing to add at the moment.

MS. SANCHEZ: Well, just to say that the treaties are evidently -- like the quit (sic) of this discussion, and just to say that the impact in Latin America, for example, in these instruments pass us by, like for very stupid things, such as translation of the instruments that later on, has very harmful impact.

So, just for example, to say that one of the articles of the '61 convention - - on the preamble that says this is to protect the health and welfare of mankind, it was translated into the Spanish version as to protect the moral and physical health of our population, which it was later on translated into Mexican law, for example, saying that the federation has this -- the health control of all of these narcotics and psychotropic substances, because these are substances that degenerate the human species.

Therefore, they must be prohibited, and therefore, all of the criminal

justice system was built into fighting these substances. So, it's not neutral, and it's very evident -- evidently, like the language, the letter of this period and the interpretation of the treaties are vital for many countries to reform their own domestic, judicial and legal framework.

MR. WALSH: Martin, any closing remarks?

MR. JELSMA: Just maybe one or two sentences to draw attention to the critical moment we are at regarding the preparations for the 2016 UNGASS. It sounds for people, maybe it's far away. But in UN terms, this is very soon. And actually, this week, negotiations are starting in the third committee of the General Assembly in New York with a resolution that -- about how to organize it, and also, there are already attempts in this very early stage to insert language to make sure that the treaty issue cannot be part of the discussion in the UNGASS.

So, it's a critical time in that sense, and it's really, I think important to at least try to keep it open and then not close the doors already in this early stage for the possibility to have an open and honest debate in 2016.

MR. BENNETT: I would merely echo Martin's point. The issue should be on the table, not presumptively off the table. If there's a way to kind of glue it to the table such that it can't be taken off the table, I think that's what we should be looking to achieve.

MR. WALSH: Great. Well, Sandeep?

MR. CHAWLA: I'd just like to make one remark to echo what we've just said. As far as the UNGASS 2016 is concerned, it's crucial that countries think in terms of the fact that this is a historical opportunity. And going to the General Assembly and simply undertaking another self congratulatory exercise will not be very helpful to the drug control regime.

Perhaps, groups of countries can work more closely together than they can. The room and the space is certainly there at the moment. And so, I'd like to end with an appeal to the sovereign countries of the world to take this seriously, because if a little bit of space is created in these UNGASS debates to do something more than what diplomats abroad are empowered by their countries to negotiate, then, I think we might have the beginnings of progress on a debate that has been stuck and paralyzed for more than 20 years. Thank you very much.

MR. WALSH: Thank you. It's clear that we do live in an interesting time.

The changes that were begun by Colorado and Washington voters in 2012 are not going to stop anytime soon. And we look forward to further future events on this topic to delve even deeper. And I want to thank you all of our panelists. On behalf of WOLA and my colleagues at Brookings Governance Studies, and especially thank you, the audience for questions and attention. Thank you. (Applause).

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